

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEORGE A. PADILLA,	:	CIVIL NO. 1:CV-06-0478
Plaintiff	:	(Judge Rambo)
v.	:	(Magistrate Judge Blewitt)
JEFFREY A. BEARD, et al.,	:	
Defendants	:	

MEMORANDUM AND ORDER

Before the court is a report and recommendation of the magistrate judge to whom this matter was referred. The report recommends that the complaint against Defendants be dismissed. The magistrate judge reviewed the complaint pursuant to 28 U.S.C. § 1915A(b).

The complaint sues Jeffrey Beard, Secretary of the Pennsylvania Department of Corrections; Robert Shannon, Superintendent of SCI Frackville; and Unit Manager Miranda. Plaintiff claims that his custody status was changed in violation of his due process rights, thereby depriving him of work and educational programs within the prison.

The magistrate judge recommended dismissal of Defendant Beard because Plaintiff failed to allege personal involvement of Beard. The recommendation to dismiss the due process claim against Defendants Shannon and Miranda was based on Plaintiff's failure to allege any violation of the Constitution or federal law.

Plaintiff has filed objections to the report and recommendation. Contrary to all the case law cited by the magistrate judge, Plaintiff claims that an

inmate's challenge to a transfer from one security level to another is cognizable under § 1983. He cites *Boutwell v. Keating*, 399 F.3d 1203 (10th Cir. 2005). That case does not stand for the proposition cited and is factually different.

Plaintiff then requests, based on *Boutwell*, that he be able to amend his complaint. Based on the case law cited by the magistrate judge, however, and since *Boutwell* does not support Plaintiff's contention, the amendment would be futile. It is not necessary to allow Plaintiff to amend where to do so would be futile. *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000). Plaintiff further requests to amend to add new defendants. If Plaintiff seeks to bring causes of action against new Defendants, he should file a new suit.

IT IS THEREFORE ORDERED THAT:

- 1) The court adopts the report and recommendation of Magistrate Judge Blewitt.
- 2) The captioned action is dismissed as to all Defendants pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim against them.
- 3) It is certified that any appeal from this order will be deemed frivolous and not taken in good faith.
- 4) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: May 18, 2006.